

REMARKS

The Office Action restricted for a second time, the present application, restricting it into Groups I through VIII, and required election by Applicants.

Applicants wish to thank the Examiner for the time and courtesies extended in the undersigned's telephone conversation with the Examiner on or about November 18, 2002 to discuss this restriction requirement.

The undersigned at that time understood the Examiner to say that Applicant had the choice with respect to Group III (which includes Claims 1-6, 8-15, 19, 29-32, 36 and 38 generally directed to Seq. ID. Nos. 5 and 6) to have that same set of claims directed to Seq ID No 2 or 4. The Examiner added that often, after election in such a situation, the Examiner might in his discretion add back into the case parallel claims directed to the non-elected Seq ID Nos.

Therefore, in response to the restriction requirement, upon cancellation of Claims 7, 16-18, 20, 21, 25-28, 33, 34, and 37, and entry of new Claims 39-76, Applicants will have three parallel sets of claims pending in the case.

The first set is comprised of Group III claims 1-6, 8-15, 19, 29-32, 36 and 38 directed to Seq ID NOs 5 and 6.

The second set is comprised Claims 39-57, which is a parallel set of claims as those of Group III, but which are drawn to Seq ID NOs 1 and 2.

The third set is comprised of Claims 58-76, which is a parallel set of claims as those of Group III, but which are drawn to Seq ID NOs 3 and 4.

Applicants elect to prosecute in this case Claims 39-57, but respectfully request that the Examiner consider permitting Claims 58-76 to remain in the case for the following reasons. Applicants point out that the polynucleotides of Seq. ID. Nos. 2 and 4 are not unrelated because they: 1) can be used alternatively or together; 2) have identical modes of operation, same function and same effect; 3) are structurally highly related and are homologs and have the same behavior (e.g. in hybridization assays).

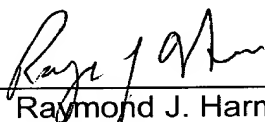
However, to be clear, if the Examiner is not persuaded to consider Claims 39-76 in this one case, Applicants, in order to be responsive to the Office Action, Applicants elect Claims 39-57 for prosecution in the case.

Further, in light of the Examiner's remarks on the telephone that in some cases the Examiner might add claims back in after examination of the elected claims, Applicants have not yet cancelled the original Group III claims and have added new Claims 58-76 on the chance that, after examination of Claims 39-57, the Examiner might then decide to add the claims of Group III and/or Claims 58-76 back into the case for consideration and allowance in this one single application. Applicants would certainly appreciate not having to file three separate cases for each of Seq ID Nos 2, 4 and 6, respectively.

Review, consideration and allowance of the claims is respectfully requested.

Respectfully submitted,

By


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VERSION MARKED TO SHOW CHANGES

Claim 35 has been amended as follows:

35. (Once Amended) An organism selected from transgenic plants, parts of plants, protoplasts, plant tissues and plant propagation materials, wherein the organism comprises an intracellular concentration of a polypeptide according to Claim 47~~15~~¹⁵ which is increased or reduced in comparison with the corresponding wild-type cells after introducing a nucleic acid which encodes a polypeptide comprising the amino acid sequence of SEQ ID NO: 6.

As explicitly set forth in **37 C.F.R. Section 1.121(c)(1)(ii), last sentence**, a marked up version does not have to be supplied for an added claim or a cancelled claim as it is sufficient to state that a particular claim has been added, or cancelled, and this has been so stated in the Amendment.

In particular, Claims 7, 16-18, 20, 21, 25-28, 33, 34, and 37 have been cancelled and add new Claims 39-76 have been added.